

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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TRUSTEES OF THE LOCAL 138, 138A & 138B
INTERNATIONAL UNION OF OPERATING
ENGINEERS WELFARE FUND, ANNUITY FUND,
LEGAL FUND, VACATION FUND,
APPRENTICESHIP TRAINING FUND AND
TRUSTEES OF THE CENTRAL PENSION FUND
OF THE INTERNATIONAL UNION OF
OPERATING ENGINEERS,

Plaintiffs,

-against-

EARLY BIRD SWEEPING CONTRACTORS, INC.,

Defendant.

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SPATT, District Judge.

On March 3, 2016, the Plaintiffs commenced this ERISA action against the Defendant Early Bird Sweeping Contractors, Inc., seeking to recover allegedly delinquent fringe benefit contributions that the Defendant was obligated to make pursuant to the terms of a collective bargaining agreement, together with associated damages under the statute, including interest, liquidated damages, attorneys' fees, and costs.

On November 30, 2016, after the Clerk noted the Defendant's default, the Plaintiffs filed a motion for a default judgment, which this Court referred to United States Magistrate Judge Anne Y. Shields.

On March 3, 2017, Judge Shields issued a Report and Recommendation, recommending that the motion for a default judgment be denied on the ground that the Plaintiffs had failed to properly serve the Defendant with process. Judge Shields further recommended granting the Plaintiffs a 60-day extension of time to effectuate service. This Report & Recommendation was

**FILED
CLERK**

1:40 pm, Mar 19, 2019

**U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE**

ADOPTION ORDER

16-cv-01066 (ADS) (AYS)

adopted in its entirety on April 8, 2017 and the Plaintiffs were given until June 7, 2017 to effectuate proper service on the Defendant. Service was completed prior to the Court's deadline.

On December 21, 2017, the Clerk of the Court issued a Certificate of Default, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure.

On August 20, 2018, the Plaintiffs again moved for a default judgment against the Defendant.

On August 22, 2018, the Court referred this matter to United States Magistrate Judge Anne Y. Shields for a recommendation as to whether the motion for a default judgment should be granted, and if so, whether damages should be awarded.

On December 19, 2018, Judge Shields issued a Report & Recommendation ("R&R") recommending that (1) a default judgment be granted against the Defendant; (2) the Defendant be ordered to submit to an audit of its books and payroll records for the period of July 1, 2013 to June 30, 2015; and (3) Plaintiffs be awarded attorney's fees in the amount of \$5,550.50 and costs and disbursements in the amount of \$1,060.00.

More than fourteen (14) days have elapsed since service of the R&R on the Defendant, who has failed to file an objection.

Pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72, this Court has reviewed the R&R for clear error, and finding none, now concurs in both its reasoning and its result.

Accordingly, the R&R is adopted in its entirety, and the Plaintiffs' motion for a default judgment is granted.

SO ORDERED.

Dated: Central Islip, New York
March 19, 2019

/s/ Arthur D. Spatt
ARTHUR D. SPATT
United States District Judge